D. Electric Cable Can Share Duct Space with Communications Cables

The electric utilities are opposed to any conduit methodology that recognizes the ability of telecommunications' and electric cables to share the same duct.[88] They vociferously maintain that communications' cables cannot share the same duct as electric cables:

> In an electric underground conduit system, an attachment occupies an entire duct. Electric distribution facilities cannot share duct space with a telecommunications attachment....the National Electric Safety Code ("NESC") precludes dual use of a duct by electric supply and communications cables."[89]

The electric utilities are overstating their case. The NESC permits communications' cables to share the same duct as electric supply cables, so long as the cables are maintained or operated by the same utility.[90] Because copper cable conducts electricity, placing it in the same duct as an electric supply cable runs a risk of creating undesirable hum; but this can be avoided with proper bonding and grounding of communications' and electric conductors. The NESC also permits electric supply and copper cables in a joint trench.[91]

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88 The Electric Utilities Coalition imply that they will not even permit communications companies access to their conduit systems. "Electric utilities believe that they have the clear right, and obligation, under §224(f)(2) to exclude third parties from access to urban conduit systems for reasons of safety, reliability, and long-standing generally applicable engineering considerations." EUC at 65.

89 AEP at 86; Con Edison at 6.

90 NESC, Section 34, Rule 341.A.6.

91 NESC, Section 35, Rule 354.

More significantly, if fiber is placed in the same duct as an electric supply cable, there is no possibility of electric hum induction, since all dielectric fiber optic cable is available. Fiber optic cable with a non-metallic shield is immune to the distorting effects of energized power cables. Provided installation is performed by the electric company, or a subcontractor approved by the electric company, if space is available, there is no technical reason a fiber cable cannot be placed in the same duct as an electric supply cable.

The Commission must permit, and account for, the joint use of fiber and electric cable in the same duct. As MCI documents in Section II.D.2 in these Reply Comments, a variety of new electric technologies are increasing the capacity of existing electrical cable in trenches and conduits, freeing up space on a going-forward basis, and increasing the opportunities for shared occupancy of ducts by telecommunications' and electric cables. The electric companies will be able to lay fiber in their trenches and conduit systems on behalf of their communications affiliates. They will also be able to pull a fiber cable through a duct partially occupied by one of their electric supply cables. The Commission therefore, must make this same technically feasible space available to companies that are not affiliated with the electric company.[92]

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[92] MCI has negotiated a number of agreements with electric companies permitting MCI to share existing electrical conduit, and in the case of fiber cable, to share space within an electrical duct. These arrangements were agreed to by the electric companies, in part, because MCI agreed to provide them fibers to help meet their communication needs. However, MCI or other new entrants may not always have fiber capacity to share.

E. Only Minor Adjustments Are Needed to Permit FERC and FCC Accounts to Capture the Assets and Expenses Associated with Conduit Structures

In its Notice, the Commission proposed using FCC Accounts 2441 (Conduit systems), and 6441(Conduit systems expense); and FERC Accounts 366 (Underground Conduit) 367 (Underground conductors and devices), 369 (Services), and 594 (Maintenance of underground lines) in its conduit formula.[93]

MCI recommends the Commission exclude FERC Accounts 367 and 369. These accounts pertain to costs associated with the current carried over electrical supply lines located within conduit systems (AC 367) and current carried over electrical supply lines going from the conduit to the customers' premise (AC 369). Just as with pole attachments, accounts should be limited to the "structure" and not include the electrical supply cables or costs associated with carrying current over those cables.[94] Attachment 1 identifies the asset and expense accounts associated with the installation, construction, and maintenance of conduit systems.

In its Comments, MCI proposed using separate FCC Accounts 2423 and 6423 for buried telephone facilities, and accounts 2441 and 6441 for underground telephone conduit systems, since underground conduit attachments would be more expensive than buried cable attachments.[95] It does not appear that FERC accounts recognize the

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93 Notice at 19.

94 If the Commission accepted this recommendation, it would not be required to determine a presumptive amount of investment that would be for non-conduit purposes.

95 MCI at 23.

cost differences between cables placed in trenches and cables placed in underground conduits. It is likely that the ratio of trenching to underground conduit costs are similar for telephone and electric construction. Therefore, MCI recommends applying ratios of trench to underground conduit investment and expenses derived from FCC accounts to FERC Accounts 357, 366 and 594.[96] Making this adjustment would effectively address electric utility concern for the failure of FERC Accounts 357, 366 and 594 to capture cost differences between urban and rural regions.[97]

F. Only Minor Modifications to the Commission's Treatment of Usable Conduit Space Are Required

The electric utilities oppose a conduit methodology that allows for sharing space within a duct, arguing that such a methodology would not permit the electric utility to fully recover its conduit costs.[98] The following example illustrates their concern: a telecommunications company installs four innerducts in a duct but uses only two innerducts. According to the electric companies, the two remaining innerducts will be available only for communications purposes. If the communication's company that

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96 For example, applying the ratio of: (AC 2423/(AC 2423 + AC 2441)) to FERC Account 357 or 366, would produce a reliable estimate of electric investment in trench facilities; (AC 2441/(AC 2423 + AC 2441)) to FERC Account 357 or 366, would produce a reliable estimate of electric investment in underground facilities. FERC Account 357 pertains to conduit housing transmission lines. FERC Account 366 pertains to conduit housing distribution lines. Similar ratios would be developed on the expense side.

97 See, e.g., Ohio Edison at 35; Edison Electric at 24; and Duquesne at 7.

98 "Because it assumes that the sharing of conduit or duct space is uniformly possible by all utilities, the application of this methodology would unfairly lead to under-recovery by an electric utility." AEP at 85.

installed the innerduct is charged for only two of the four innerducts it occupies, the cost of two unused innerducts will be unrecovered.[99]

The electric utilities argue that §224(i) requires the company requesting the innerduct to be liable for all installation costs, not just one-half of the costs, as the Commission's half-duct formulas suggests. They propose initial installation costs to be recovered through make-ready charges imposed on the communication's company requesting innerduct. This company would subsequently be reimbursed, as other communications providers make use of the remaining innerducts.[100]

This may be a correct interpretation of the Pole Attachment Act, but in no way does it invalidate formulae that account for innerducting. For example, suppose one of the remaining two innerducts is subsequently used by the communication's affiliate of the electric company. How much space should it be allocated for rate purposes? The answer is one-fourth of the duct, not the whole duct. The problem is the electric utilities confuse non-recurring, make-ready costs; and recurring costs. One must still use the innerducting formula to set recurring rates. Take the communication's company that used two of the four innerducts it installed in the above example. It paid for the innerducting installation through non-recurring, make-ready charges. But what recurring rate should it pay? It would amount to double-recovery if it were charged a

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[99] Of course, if a communications company wishes to hold these 2 innerducts for its own maintenance and reserve purposes, it should be permitted to do so, according to the per innerduct rate, as long as the electric company is not able to show that it requires this space for electric supply according to an approved electric development plan.

[100] Union Electric at 16; Con Edison at 4.

recurring rate based on the use of four innerducts. After already having paid for the non-recurring installation of four innerducts (including labor, materials, profits, and overheads), it should not be required to pay a recurring charge for more than the actual number of innerducts it occupies.[101] Consequently, accounting for innerducting in the conduit formula for recurring rates is eminently just and reasonable. The only modification to the Commission's innerducting term required is the one proposed by MCI and other non-incumbents. These parties provide evidence that standard ducts may be subdivided between 3 and 4 times.[102] MCI's proposed use of 3.5 innerducts reasonably captures existing practice.

G. Only Minor Modifications to the Commission's Treatment of Reserve Conduit Space Are Required

In its Comments, MCI argued that since a duct may be subdivided into innerduct, it is not necessary to reserve all of a duct for communications maintenance and emergency purposes. A portion of a duct will suffice. Thus, the formula should deduct the number of innerducts required for reserve purposes from the average number of innerducts per conduit system. The Commission should set the number of innerducts reserved per conduit system equal to "one" (1). Each conduit system requires one

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101 One might argue that if the remaining two innerducts are never used, maintenance costs would not be fully recovered, since the company occupying two innerducts is only paying one-half of the maintenance costs in its recurring rate. However, since recurring rates include maintenance and investment costs, the company initially requesting innerduct is paying twice for investment and overhead costs — once through make ready, and once in the recurring rate.

102 MCI at 25; NCTA at 42; AT&T at 22; and Time Warner at 28.

maintenance innerduct. But since this maintenance innerduct is only made available for temporary uses, there is no need to presume that more than one should be reserved for maintenance in any conduit system.

Other parties go further and suggest that cable and communications attachees are generally denied access to reserve space in utility conduit.[103] It is true that communications' repairs can be accomplished in the absence of a reserve innerduct. In such a situation, a replacement cable is placed out of the manhole, along the curb of the street, and into the next manhole. A section throw is then completed to replace the bad section of cable by transferring working service into the curb line cable. The defective section is then pulled out of the conduit system, a new cable is placed in the now spare duct, and a section throw is completed from the curb line cable into the new section of underground cable. Thus, MCI's proposal to reserve one innerduct per conduit system for communication's purposes is very generous to the utility companies.

The electric utilities claim that a presumptive figure for the number of (inner)ducts reserved for cable or communications attachment may lead to an incorrect valuation since it will "fail to consider all of the facts associated with a conduit arrangement."[104] However, none of the electric utilities present even a single case that might pose a problem for the Commission's treatment of reserve space.

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[103] NCTA at 43; Time Warner at 28; AT&T at 23.

[104] For example, AEP at 87.

Edison Electric argues that all unused ducts are required for electric purposes.

> "Reserved underground space is not reserved or appropriate for future non utility use, even if it can accommodate some future electric system expansion with it. Therefore, reserved power supply duct space must be considered unavailable for non supply purposes."[105]

This argument relates to duct space reserved for electric purposes, and therefore is completely unrelated to reserved space needed for communication's purposes. In fact, EEI's position lends support for the notion that communications attachees do not gain access to conduit reserve space. In any case, the Commission should take this opportunity to affirm its rejection of utility arguments that all reserve space is needed for current and future growth.[106]

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105 EEI at 19.

106 "We will permit an electric utility to reserve space if such reservation is consistent with a bona fide development plan that reasonably and specifically projects a need for that space in the provision of its core utility service. the electric utility must permit use of its reserved space by cable operators and telecommunication carriers until such time as the utility has an actual need for that space...An electric utility may not reserve or recover reserved space to provide telecommunications or video programming service, and then force a previous attaching party to incur the cost of modifying the facility to increase capacity, even if the reservation space were pursuant to a reasonable development plan." Interconnection Order at ¶1168.

The Electric Utilities Coalition attempts to create an "other-than-usable conduit space," and then proposes assigning the cost of this space to communications' companies. [107]

> "Due to NESC clearance requirements other ducts also may be forced to remain empty. Telecommunications companies should also pay for required empty ducts."

The Electric Utilities Coalition never identifies the NESC clearance requirements that might force other ducts to remain empty. The NESC does require separations between copper cables and supply cables in underground conduit (but not between fiber cables and supply cables), but nowhere requires a reserve duct to be used as a method of separation.[108] Moreover, the NESC does not necessarily require any separation between copper communications cable and electric supply cable buried in trenches.[109]

VI. Conclusion

For the above-mentioned reasons, MCI encourages the Commission to adopt the tentative conclusions that it proposes in the Notice, and to adopt the proposals suggested by MCI herein.

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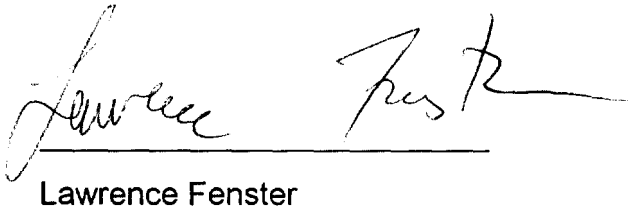
107 EUC at 75.

108 "Conduit systems to be occupied by communication conductors shall be separated from conduit systems to be used for supply systems by: a) 3 inches of concrete; b) 4 inches of masonry; or 12 inches of well-tamped earth." NESC, Section 32, Rule 320.B.2.

109 NESC, Section 35, Rule 354.D.

STATEMENT OF VERIFICATION

I have read the foregoing and, to the best of my knowledge, information and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on August, 11, 1997.



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CERTIFICATE OF SERVICE

I, Meslabeba Essayas, do hereby certify that a copy of the foregoing **Reply Comments** has been sent by United States first class mail, postage prepaid, hand delivery, to the following parties on this 11th August, 1997.

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Attachment 1
FERC Accounts Containing Pole, Transmission and Conduit Support Structure Investments and Expenses

	FERC Account	Account Name	Description
POLES	364	Poles, towers and fixtures.	The cost installed of poles, towers, and appurtenant fixtures used for supporting overhead distribution conductors and service wires.
	593.1 (Major)	Line Maintenance	The cost of labor, materials used and expenses incurred in the maintenance of overhead distribution line facilities attributable to account 364.
	594.1.1 (NonMajor)	Line Maintenance	The cost of labor, materials used and expenses incurred in the maintenance of overhead distribution line facilities attributable to account 364
TRANSMISSION	354	Towers and fixtures.	The cost installed of towers and appurtenant fixtures used for supporting overhead transmission conductors.
	355	Poles and fixtures	The cost installed of transmission line poles, wood, steel, concrete, or other material, together with appurtenant fixtures used for supporting overhead transmission conductors.
	566	Misc. expenses	The cost of labor, materials used and expenses incurred in transmission map and record work, transmission office expenses, and other transmission expenses not provided for elsewhere attributable to facilities booked to accounts 354 and 355.
	571.1 & 571.3	Line Maintenance	The cost of labor, materials used and expenses incurred in maintenance of transmission plant, attributable to facilities booked to accounts 354 and 355.
	574.1 & 574.3	Plant Maintenance	The cost of labor, materials used and expenses incurred in the maintenance of transmission plant attributable to facilities booked to accounts 354 and 355.
CONDUIT	357	Conduit	The cost installed of underground conduit and tunnels used for housing transmission cables or wires.
	366	Conduit	The cost installed of underground conduit and tunnels used for housing distribution cables or wires.
	572.1	Line Maintenance	The cost of labor, materials used and expenses incurred in maintenance of transmission plant attributable to account 357.
	574.4	Plant Maintenance	The cost of labor, materials used and expenses incurred in the maintenance of transmission plant attributable to facilities booked to account 357.
	594.1 & 594.3 (Major)	Line Maintenance	The cost of labor, materials used and expenses incurred in the maintenance of distribution plant attributable to facilities booked to account 366.
	594.1.3 (NonMajor)	Line Maintenance	The cost of labor, materials used and expenses incurred in the maintenance of underground distribution line facilities attributable to account 366

Attachment 2

Letter from Jonathan B. Sallet
to
Reed Hundt

July 10, 1997

MCI Communications
Corporation

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202 887 3351
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Jonathan B. Sallet
Chief Policy Counsel

VIA HAND DELIVERY

July 10, 1997

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554

Dear Chairman Hundt:

In your recent speech to the Brookings Institution[1], you described two possible paths that new entrants might use in order to provide local telephone service.

Of the "thinkable" course, you said "[t]o implement a competitive entry strategy in today's transition period, a new entrant has to be an aggressive, albeit reasonable, advocate in all venues -- in the marketplace, in negotiations, in state regulatory proceedings, in front of the FCC and in court." And you said specifically that "new entrants need to be pushing for fair interconnection agreements.... fast, fair and efficient ordering and provisioning so they can aggressively sign up customers...[and they] need to be planning and making the requisite investments so they can provide the competitive access to the information network to all parties in the economy."

MCI has followed -- and continues to follow -- the course that you outlined. MCI has been the most aggressive competitor attacking the local market. We have clearly stated our intent to be a full-service local provider. We will compete in every market segment and every part of the country. And we're moving quickly to realize this goal. By the end of the year, MCI will have invested nearly $2 billion to provide facilities-based local service. As of today, we have turned up twenty-three U.S. markets and we will be a facilities-based provider in thirty-one markets by the end of the year. On the resale side, we have invested heavily to build the internal systems and infrastructure to serve the consumer market. We began offering local service to consumers six months after the Act was enacted. Today, we are offering service in four states and plan to expand to nine states by the end of the year. We expect to be offering resale products in 29 states by the end of 1998.

As competitive opportunities increase, so will our investment in local markets. MCI's

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[1]Chairman Reed E. Hundt, Federal Communications Commission, Brookings Institution, Washington, D.C., "Thinking About Why Some Communications Mergers are Unthinkable", June 19, 1997.

anticipated merger with British Telecommunications will mean that MCI will be well-positioned as an even stronger competitor for local market entry.

There is, quite simply, no other long-distance company that has come so far, worked so hard and invested so much in providing facilities-based local telephone service. Today, MCI stands alone as the only company that has publicly announced a nationwide strategy to bring facilities-based competition to residential and business customers.

But there is a very large problem. As we detail below, the local telephone incumbents retain monopoly power and they do not intend to give up their monopolies voluntarily. That is why we are encouraged by the pledge, in your Brookings speech, that the Federal Communications Commission (the "FCC" or "Commission") "will act rapidly and fairly in response to petitions of incumbents and new entrants."

That was an important, and much appreciated, promise. To realize the "competitive entry strategy in today's transition period," the Act put in place a regulatory structure and agenda that would permit the rapid opening of local markets through:

-- Quick access to local facilities needed to provide local telephone service through, among other means, operating support systems (OSS) that would allow new entrants to compete on an equal footing with incumbents.

-- Permanent, forward-looking prices that encourage the fast entry of, and investment by, new competitors into the local market,

-- Swift and certain enforcement of statutory and regulatory obligations that would prevent the incumbents from utilizing their current monopoly powers to thwart new competitors in the local market or the long-distance market.

As of today, none of these critical building blocks to local competition has been put fully into place. In this letter, therefore, we:

-- detail the tactics that incumbent monopolies are using to frustrate the key premises of the Act: forward-looking pricing, OSS, and enforcement of statutory and regulatory obligations,

-- set forth the critical actions that the FCC must now take in order to fulfill the critical premises of the Act, including:

-- immediate establishment of OSS performance standards and deadlines, with automatic penalties to follow any non-compliance,

-- abolition of unjustified and excessive one-time costs, known as non-recurring

charges (NRCs), which block entry and, in particular, discourage facilities-based competition, and

-- establish new enforcement mechanisms that will permit a "quick look" to ensure that service disruptions are immediately ended.

-- address the actions that the FCC must undertake to eliminate threats to a competitive long-distance market, including:

-- immediately abolishing the interim payphone charges that the D.C. Circuit has found to be unjustified,

-- ensuring that incumbents cannot abuse billing and collection contracts in order to prevent the delivery of services to consumers and businesses, and

-- adoption of rules to ensure that incumbent practices do not lock in customers and impede competition through so-called PIC freezes.

INCUMBENT TACTICS TO MAINTAIN MONOPOLY MARKETS

The facts demonstrate that, while tactics vary by company and by state, there is a clear pattern of anti-competitive abuse by local phone monopolies to delay entry by MCI and others into local markets through inflated pricing, failure to implement effective OSS (even six months after the FCC's January 1, 1997 deadline) and varied tactics against which there has yet to be effective enforcement activity.

These tactics generally fall into the following three categories: (1) Delay ; (2) Disruption; and (3) Disparate Treatment of New Entrants. Examples of each are given below.

- Delaying Tactics

Regional Bell Operating Companies (RBOCs) consistently engage in inexcusable delays designed to hinder MCI's entry into local markets. By doing so, they attempt to accomplish two goals. First, they extend and strengthen their monopoly stronghold. Second, after imposing delay tactics, they contend that the lack of competition in any given market is a direct result of the competitors' lack of effort to enter the local market. That is not, of course, the case.

First and foremost, RBOCs have hindered MCI's ability to enter the local market by refusing to enter into signed interconnection agreements. MCI participated in 41 arbitrations in 29 states and the District of Columbia. While the Act requires that arbitrations be completed within nine months, because of the RBOCs' incentive to delay competition, MCI and other competitive local exchange carriers (CLECs) have been forced to negotiate and, in certain cases,

renegotiate terms in order to reach a final agreement upon completion of these arbitrations. In addition to the specific actions detailed below, the Commission should send a firm signal to states that final interconnection agreements should be approved promptly.

Indeed, NYNEX recently reneged on an agreement to file an interconnection agreement with MCI in New York in April. In the end, MCI was forced to file a claim of bad faith with the New York Public Service Commission and does not anticipate obtaining an approved agreement with NYNEX until the end of this summer. NYNEX's anticipated merger partner, Bell Atlantic, has failed to enter into even one approved agreement with MCI in any of its states. Incredibly, USWest recently advised MCI that it had signed and filed an interconnection agreement in Oregon. MCI, after failing to receive its executed copy, found out from the state docket office that in fact no agreement had ever been filed. Once confronted, USWest finally admitted that it had never signed the agreement and had no intention of signing an interconnection agreement. As a result of these and similar delaying tactics by incumbent local exchange carriers (ILECs) throughout the country, MCI only has been able to execute 25 percent of the interconnection agreements that it has requested and has been able to actually implement even fewer.

Another example are the recent tactics employed by USWest, which resulted in MCI having to postpone local market entry in Colorado. As a result of USWest's continual delays in implementing an effective and efficient OSS system, MCI was forced to seek an extension of the July 31, 1997 date set by the Colorado Public Utilities Commission (Colorado PUC) for MCI to begin offering local residential service in Colorado. Prior to making that request, MCI began meeting several months ago with USWest representatives with an eye toward implementing an effective OSS system. Despite MCI's best efforts, those attempts were unsuccessful, and USWest insisted on implementing an OSS system that was inferior to that suggested by MCI. At MCI's invitation, several members of the Colorado PUC staff visited MCI's local service ordering facility to observe first-hand the inadequacies of USWest's OSS system. Because OSS is critical to MCI's ability to provide quality services, when faced with the choice between providing inadequate local service or no service at all, the only possible choice was to seek a postponement of the July 31, 1997 deadline.

Similar circumstances arise in Ameritech territory. The Department of Justice has recognized that unbundled access to common (shared) transport is critical to local competition.[2] Yet, with respect to issues of unbundled access to common transport, Ameritech has for months gamed the process, and now, the blame for delay in provision of unbundled access to common transport must be laid entirely at Ameritech's feet. Only after the record closed in the

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[2] "With respect to unbundled switching and shared transport, [Ameritech's] failure to make these checklist requirements practically available to its competitors forecloses an important entry vehicle involving the network platform." Evaluation of the United States Department of Justice, In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in the State of Michigan, CC Docket No. 97-137, p. 34.

AT&T/Ameritech arbitration did Ameritech for the first time assert that the Act does not require it to provide unbundled access to common transport. After its argument was rejected by the Michigan Public Service Commission, Ameritech still refused to provide common transport. Today, thumbing its nose at the Act, the Commission's implementing orders. and orders of several state regulatory commissions (i.e., Wisconsin, Michigan and Illinois), Ameritech continues to insist that it is not required to provide unbundled access to common transport.

Another problem is Ameritech's continued refusal, beginning on January 29. 1997, to test unbundled local switching on the basis that it was not tariffed and MCI did not have an approved interconnection agreement in Michigan. Indeed, today MCI still does not have an approved interconnection agreement in Michigan, and Ameritech continues to interpose frivolous "protests" to delay the approval of such an agreement. Ameritech has engaged in similar tactics in Illinois where. after approval of an interconnection agreement, MCI submitted its unbundled switching testing proposal on May 20, 1997. Ameritech responded that testing had to be conducted pursuant to the agreement's 120-day bona fide request process. Ameritech promises to complete development work--but not testing-- in late September 1997. Moreover. at two meetings in June 1997, Ameritech refused to commit to a price for unbundled local switching. claiming not to have the right personnel at either meeting.

Another example of inexcusable delay occurred when, as is discussed more fully below. MCI discovered that several of its customers in California were not able to receive incoming telephone calls because PacBell has not been activating MCI's NXXs in accordance with industry guidelines. After MCI filed a request for clarification of NXX activation requirements at the Commission. representatives of the Common Carrier Bureau requested a joint meeting with MCI and PacBell. Rather than send PacBell representatives with knowledge of the NXX activation problems to that meeting, PacBell sent two SBC employees that had no knowledge of the technical capability of the PacBell network or the genesis of the problem. This blatant disregard for the impact of its actions on customers, coupled with the continued resulting delay of resolution of the problem, is not only inexcusable, but also directly and adversely impacts the ability of CLECs to provide consumer choice and quality service.

- Disruption

Bell Atlantic has demonstrated an uncanny ability to disrupt attempts to successfully process MCI's local service orders. Recently. Bell Atlantic asserted a sham reason for rejection of an MCI circuit order. Specifically, Bell Atlantic rejected a circuit order request for a line reaching a Baltimore, Maryland, location, stating that MCI had included the wrong address on the order. MCI has used the exact same address for similar orders for years, and Bell Atlantic has never before rejected an order for lack of proper address. Upon further investigation, MCI discovered that there were (and always have been) two separate entrances to the same building located at the address on the order. MCI also discovered that, after two years working with Bell Atlantic to install equipment at this location, Bell Atlantic suddenly decided to reject the order because it had decided to use the other address for the location. Of course, Bell Atlantic did not

provide that information when it rejected the order. Instead, MCI was forced to conduct its own investigation in order to discover that Bell Atlantic had decided to use the other address. This is the kind of disruption to the business process that wastes resources, time and energy. All Bell Atlantic had to do was to process the order, with an indication that going forward MCI would have to use the other address for the building. Instead, Bell Atlantic chose to reject MCI's order, and disrupt the process for no good reason.

Another master of disruption is SBC. After MCI battled for years to overcome a state law that stands as one of the most anti-competitive legal barriers to local competition in the Nation, the first phase of SBC's disruption to the regulatory process came to an end on June 4, 1997, when the Texas PUC granted MCI's request for permission to provide local service in Texas. Now that MCI is an authorized local service provider, SBC is focusing its efforts on phase two of its scheme: placing "retention" sales calls to customers that have expressed an interest in switching to MCI for local service, before those customers have actually enrolled in MCI service.[3]

This practice takes unfair advantage of SBC's role as "supplier" to MCI. In order for MCI to present a bid for a potential customer's local business, MCI must first know exactly what type of service the new customer receives from his current provider. Armed with that information, MCI can provide a competitive bid for the same services. In order to obtain the critical historical information, MCI typically must ask the customer to request from SBC a copy of the customer's local service summary report. MCI has learned that after requesting such reports, customers soon receive calls from SBC representatives who attempt to plant seeds of doubt in the customers' minds about MCI's ability to provide local services. Of course, it is only by virtue of SBC's monopoly position that it can use this information to target potential customers and try to convince them to remain with SBC before they have even had a chance to act upon a decision to switch to MCI. SBC is not alone. Earlier, MCI had learned that PacBell, upon its receipt of changeover orders for MCI local services, placed similar "retention" calls to customers in order to dissuade them from switching to MCI. Moreover, MCI has just this week verified reports that BellSouth has engaged in similar practices. This egregious practice is only made possible by the incumbents' access to customer information and monopoly position in the marketplace.[4]

NYNEX is another RBOC that has mastered the art of disruption. Between September 24, 1996, and January 17, 1997, MCI submitted 85 collocation applications in NYNEX's region.

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[3]Unlike calls made by competitors in order to "win back" business lost to a competitor after a change has taken place, "retention" calls are made by SBC prior to the time a sale has been consummated.

[4] MCI filed a complaint against PacBell at the Commission in early February in an effort to rectify this problem.

Despite assurances from NYNEX that collocating was part of normal business and should not require special attention, the entire project suffered from a series of delays interposed by NYNEX. As of May 5, 1997, only 32 applications had been handled in an acceptable manner. NYNEX rejected another 26 applications due to alleged space limitations.[5] Although NYNEX and MCI are now working toward a virtual collocation solution, NYNEX delayed the process for months, ensuring that little if no progress was made between MCI's original collocation request almost a year ago, and NYNEX's eventual later agreement to work toward resolution of the problems using a virtual collocation alternative.

USWest has also demonstrated that it will take positions designed to disrupt a smooth transition to a competitive local market place in its region. For several years, USWest has consistently engaged in tactics designed to delay MCI's entry into local markets within its region. MCI's problems in the State of Oregon, for example, began over a year ago in March 1996 when just three months after the Oregon PUC ordered local interconnection. MCI was forced to file suit to enforce the order. MCI had to return to the Oregon PUC on two additional occasions before USWest finally agreed to discuss interconnection with MCI. It was not until September 1996 that MCI finally turned up the first local customer in Oregon after entering into an interim interconnection agreement with USWest.

Although those specific incidents occurred several months ago, they are illustrative of the pattern and practice of abuse of the process in which USWest regularly participates. After disrupting the regulatory process, USWest typically transitions quickly to disrupting the actual process of interconnection. For example, after several months of attempting to resolve significant interconnection problems, MCI was forced to bring suit against USWest in late June at the Washington Utilities and Transportation Commission due to USWest's continued refusal to provide interconnection facilities in a timely manner in the Seattle and Tacoma markets. USWest has, for example, advised MCI that due to constrained port capacity, USWest will be unable to provision trunks between MCI's Seattle switch and USWest's Tacoma tandem, and further, that USWest does not intend to address the lack of capacity until at least October 31, 1997. USWest suggested that MCI order direct end office trunking to alleviate this problem. Of course, this alternative involves additional cost to MCI, as those trunks must be purchased from USWest. In the meantime, MCI is forced to discontinue marketing its services in Tacoma, and is preparing to order twenty-four trunks to each of several different end offices in the Tacoma area. MCI has recently learned from USWest that this solution may be temporary because US West is also experiencing port constraints in many of its end offices in Tacoma. These disruptions to the interconnection process and MCI's business plans, simply because USWest has not taken steps toward preparing its network for competition, are simply unacceptable.

USWest has also rejected several orders to change MCI branch offices to MCI's local service, which it is purchasing for resale from USWest. USWest has asserted as support for

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[5]NYNEX has not complied with the Act's requirements that it certify the space limitation finding with the New York Public Service Commission.

rejection of those orders its unsubstantiated belief that the law does now allow new entrants to resell services to its affiliates.

- Disparity

A third category of obstruction arises when incumbent local exchange carriers (ILECs) treat themselves better than they treat MCI and other new entrants. This is an area of great importance, especially at a time when some incumbents will have entered the long-distance market and others express eagerness to do so. The ability to discriminate is obvious. In a typical circumstance, MCI requires cooperation from the local incumbent in order to initiate service to local customers and to provide service to long-distance customers. This provides ample opportunity for the incumbent to prefer itself or its affiliates of its competitors. For example, when a new customer signed up for MCI service at her new address, PacBell took over three weeks to disconnect the previous occupant's local service, and provide dial tone for the new MCI customer. During this period, the MCI customer had only soft dial tone, which allowed her only to place 411, 911 and calls using a calling card. Upon complaining to PacBell, the MCI customer was told by a PacBell representative that had she selected PacBell for her local service provider, the problems could have been corrected within ten (10) days.

Another example of disparate treatment is the procedure SNET requires MCI to follow to obtain customer service records (CSRs). SNET requires that MCI complete requests for CSRs via fax machine, a process which takes up to ten (10) days to complete. SNET employees, on the other hand, can access CSRs for SNET's retail customers on-line. Additionally, in May, due to an unannounced relocation of the fax machine, MCI was unable to process CSR requests for nearly an entire business day. During that time, SNET was not adversely affected because its employees continued to access CSR information on-line during the fax machine outage.

Similarly, and similarly disturbing issues arise when ILECs can provide themselves with more favorable treatment in matters relating to billing, the process for changeovers for long-distance providers, and, of course, prices levied on new entrants for services that incumbents provide to themselves. In each area, as we explain below, the Commission must take action.

OPENING LOCAL MONOPOLY MARKETS

With the completion of the initial regulatory "trilogy", the Commission must now move forward to turn the rules of competition into competitive realities. This requires action on a number of fronts--the most pressing include:

1. OPERATIONS SUPPORT SYSTEMS (CC Docket No. 96-98)

MCI supports the CompTel/LCI petition for OSS parity. The FCC should promptly publish a Notice of Proposed Rulemaking with a final order by November 1997, establishing specific requirements for performance standards, measures, reporting and penalties in connection

with the provision of OSS. Performance standards, reporting, and enforcement are necessary to ensure that access and interconnection are provided at parity and on reasonable terms. ILEC provision of OSS affects timely provision of service to subscribers, the quality of such service, and the goodwill of new entrants.

In addition, pursuant to section 256 of the Act, the Commission should take immediate action to notify the Ordering and Billing Forum (OBF) that it should take any and all actions necessary to expedite resolution of industry standards. The Commission should state that, while it encourages resolution of technical standards-setting by the industry in voluntary fora such as OBF, resolution of the OSS issues is critical to ensuring that new entrants and incumbents can develop national standards. For that reason, the Commission should announce that it will monitor OBF progress on this issue, and send a representative to meetings as necessary to ensure that national standards are reached as soon as possible.

Finally, the Commission should recognize that incumbent monopolies will have little or no incentive to follow through on the performance of OSS systems unless there is a specific, quick and simple remedy for any performance failure. In order to ensure that ILECs strictly adhere to the performance standards that are ultimately adopted, the Commission should establish regulations that award new entrants automatic performance credits for any delay or failure to timely provision an OSS function or unbundled element. We believe that the provisions dealing with performance credits in MCI's interconnection agreement with USWest in Minnesota should be viewed as a model for the imposition of performance credit requirements when a party fails to provide timely provisioning of services. Standard damage remedies are insufficient as both a deterrent to incumbents and as a means of compensating competing providers. Given the integral role of OSS in enabling new entrants to provide timely and reliable service, stringent enforcement mechanisms are necessary to prevent the incumbents from delaying competition.

2. FINAL, COST-BASED PRICING

Non-recurring charges that are not based on forward-looking costs or that should be appropriately levied only as recurring charges form a substantial -- and substantially unappreciated -- barrier to local entry. In its Interconnection Order, the Commission recognized the importance of making rates for all unbundled elements based on cost. NRCs are an integral part of unbundled elements because they represent the charges associated with ordering and provisioning of these elements. Therefore, when a CLEC wishes to purchase elements or resell ILEC services, the cost must not simply be calculated as the cost of the element, it must be calculated to include the NRC as well. For these reasons, MCI contends that NRCs must not be viewed as a separate but expendable charge, instead they should be calculated as an additional cost of purchasing an element. Thus, when ILECs are permitted by states to assess excessive NRCs, in effect, it creates a barrier to local market entry.

The Commission should require states to compel ILECs to price NRCs, to the extent that

such charges are independently justified, based on cost. To date, NRCs have not been deemed cost-based, are prohibitively expensive and ultimately constitute a barrier to entry. For example, in California, the cost for interconnection of a loop is approximately $187.00 while in New Jersey, the rate for the same work is only approximately $27.00. Although different incumbents may have somewhat different cost structures, disparity this wide in nonrecurring charges is prima facie evidence that rates are not cost-based.

The adverse impact of unjustified NRCs is particularly great on facilities-based competition. We have seen that NRCs are higher on facilities-based entry than on resale, which leads to the obvious conclusion that the RBOCs would prefer to drive local competitors towards resale (where the discounts are lower and inflated access charges remain in place) and away from facilities-based competition, which is precisely the sort of competition that Congress and the FCC wish to encourage. It is facilities-based competition, of course, that permits MCI to best bring innovation and new products to the local market for the first time.

In addition, one of the biggest impediments to the development of local competition is the uncertainty of interim rates for unbundled elements and resale while state commissions complete permanent cost proceedings. The Commission must act now to clarify that, for the purposes of evaluating RBOC entry applications under section 271 of the Act, the evaluation of whether the checklist has been met is a federal determination that requires unbundled elements to be priced at total element long run incremental cost and resale to be priced using the Commission's preferred resale methodology, as the Commission told the Supreme Court in its motion to vacate the Eighth Circuit stay. This requirement is independent of any rulemaking authority under Section 251(d).

3. DIALING PARITY -- DOCKET 96-98

The FCC must quickly release a reconsideration order on dialing parity for directory assistance services to make clear that ILECs must provide new entrants with magnetic tape directory listings and third party data so that new entrants can populate their own directory assistance databases without having to rely on RBOC networks. Without such an order, new entrants will be entering local markets without the ability to provide competitive 411 services, which are valuable to consumers and critical to the success of competition.

Moreover, in this docket, the Commission has ordered that intraLATA toll dialing parity be implemented based on LATA boundaries. The Commission should thus clarify that RBOCs located in states that have ordered intraLATA toll dialing parity must provide intraLATA toll dialing parity for those portions of the LATA that cross that state's boundary.

4. SINGLE-LATA STATES

The FCC should intervene on the state commission's side in a Delaware case in which the definition of "single-LATA state" in section 271(e)(2)(B) of the Act is at issue. The Commission